

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 00-2304

JEAN G. NYEMBO SHABANI,
KATSHELEWA MUGOGWA
Plaintiffs.

CIV - LENARD

V.

JOHN POINDEXTER,
Defendant.

MAGISTRATE JUDGE
TURNOFF

PLAINTIFFS' ORIGINAL COMPLAINT

A. PARTIES

1 Plaintiffs G NYEMBO SHABANI and KATSHELEWA MUGOGWA sue Defendant JOHN POINDEXTER and allege as follows:

B. JURISDICTION AND VENUE

2. Plaintiffs JEAN G. NYEMBO SHABANI and KATSHELEWA MUGOGWA are individuals who are citizens and residents of the Democratic Republic of Congo(former Zaire).

3. Defendant JOHN POINDEXTER is an individual who is citizen and resident of the State of Florida. He may be served with process at 6911 NW 51 Street, Miami, Florida 33166.

4. The Court has jurisdiction over the lawsuit under 28 U.S.C. Section 1332 because the suit is between a citizen of a state and citizens of a foreign state, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

C. GENERAL ALLEGATIONS

5. By Mid-1996, Defendant made misrepresentations to Plaintiffs that Defendant was an accredited and knowledgeable dealer/seller of aircrafts in the United States of America, and that Defendant could serve as Plaintiffs' agent and secure the sale of Plaintiffs' only aircraft, one McDonnell DC-10-10, that Plaintiffs were using for farming needs, at the highest price possible in the United States.

NIGHT BOX
FILED

JUN 28 2000

CLARENCE MADDOX
CLERK, USDC / SDFL / MIA

6. By September 1996, Plaintiffs induced by Defendant's misrepresentations, entered into an agreement with Defendant under the terms of which Defendant would use his expertise and his best efforts to sell the DC-10-10 aircraft, and defendant would receive as compensation for his expert services, 7% of the proceeds from the sale.

7. Plaintiffs were induced by the above misrepresentations, to relinquish to Defendant all documents in their possession establishing their ownership of the aircraft, and to give Defendant power of attorney to effect the sale.

8. Defendant who in fact was not an aircraft dealer and had neither expertise no experience in the sale of aircrafts, negotiated the sale of the aircraft for \$1,433,761 under a sale contract which did not provide that the seller reserves the right of repossession of the aircraft if the entire price was not paid by the purchaser, as has always been the usage in the industry.

9. Defendant received from the purchaser AERO CONTROLS, a portion of proceeds of the sale, in amount of \$520,000, and Defendant deliberately refused to turn over the monies to the owners of aircraft on behalf of whom he was acting.

10. As a result of defendant's actions, plaintiffs retained counsel and seek reimbursement for its reasonable attorney fees.

COUNT I DECLARATORY RELIEF

11. Plaintiffs G. NYEMBO SHABANI and KATSHELEWA reallege and incorporate as if fully set forth herein the allegations of paragraphs 1-10.

12. Plaintiffs maintain that Defendant's misrepresentations as to his expertise and accreditation induced Plaintiffs to enter into the agreement with Defendant.

13. Plaintiffs maintain that the agreement induced by such material misrepresentations by Defendant is void both under the laws of the Democratic Republic of Congo, and of the State of Florida.

WHEREFORE, PLAINTIFFS pray that this Court take jurisdiction of this cause and enter judgment declaring that:

- (1) The agreement induced by fraudulent misrepresentations is void; and
- (2) DEFENDANT owes to PLAINTIFFS in restitution the value of the aircraft in amount of \$3,000,000.00, and
- (3) Such further legal and equitable relief as the Court deems just.

**COUNT II: IN THE ALTERNATIVE:
BREACH OF CONTRACT**

14. Plaintiffs G. NYEMBO SHABANI and KATSHELEWA reallege and incorporate as if fully set forth herein the allegations of paragraphs 1-10.

15. In the event this Court finds the agreement not voidable for reason of material misrepresentations made by Defendant, Plaintiffs pray this Court to find breach of contract by Defendant.

16. Plaintiffs maintain that Defendant breached the contract by (1) failing to use his best efforts to protect the interests of Plaintiffs, something that could have been achieved by any reasonable person by providing for a security interest in the agreement to secure payment of the entire price, and (2) violating his fiduciary duty of accounting owed to plaintiffs by failing to turn over to plaintiffs, the \$520,000 received from the purchaser of the aircrafts.

17. As a result of Defendant's breach of the contract, Plaintiffs have been damaged.


WHEREFORE, Plaintiffs pray that this Court take jurisdiction of this cause and enter judgment as follows:

- (1) 520,000 for monies received on behalf of Plaintiffs;
- (2) 750,000 for the unpaid portion of the aircraft price, damages caused by Defendant's failure to perform his fiduciary duties;
- (3) Compensatory damages in an amount to be proved at trial;
- (4) Prejudgment interest and costs; and
- (5) Such further legal and equitable relief as the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request trial by jury on all issues so triable by right.

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Dallas, Texas 75202
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By: 
NGOYI PAUL NGOYI
New York Bar No. 3017894

CIV-LENARD

CIVIL COVER SHEET

JS 44
(Rev. 12/98)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JEAN G. NYEMBO SHABANI
KATSELENA MUGOGWA

DEFENDANTS

JOHN POINDEXTER TURNOFF

MAGISTRATE JUDGE

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF KINSHASA/CONGO
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT DADE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE **NIGHT BOX**
TRACT OF LAND INVOLVED

FILED

JUN 28 2000

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER): NGOJI PAUL NGOJI
900 JACKSON STREET, SUITE 600
DALLAS, TX 75202

ATTORNEYS (IF KNOWN)

(d) CIRCLE COUNTY WHERE ACTION AROSE: DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS, CLARENCE, MADDOX

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☐ 1 ☒ 1 PTF DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☒ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT	A TORTS	FORFEITURE/PENALTY	A BANKRUPTCY	A OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 160 Medicare Act <input type="checkbox"/> 170 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 180 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 375 Torts in Land <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 A PROPERTY RIGHTS <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark B SOCIAL SECURITY <input type="checkbox"/> 601 HIA (1395H) <input type="checkbox"/> 602 Black Lung (923) <input type="checkbox"/> 603 DIWC/DIWH (4055g) <input type="checkbox"/> 604 SSIO Title XVI <input type="checkbox"/> 605 RSIO Title XVI	<input type="checkbox"/> 430 State Reapportionment <input type="checkbox"/> 435 Antitrust <input type="checkbox"/> 440 Banks and Banking <input type="checkbox"/> 450 Commercial/ICC Arbitration <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 475 Selective Service <input type="checkbox"/> 480 Securities/Commodities Exchange <input type="checkbox"/> 475 Customer Challenge 12 USC 3410 <input type="checkbox"/> 491 Agricultural Acts <input type="checkbox"/> 492 Economic Stabilization Act <input type="checkbox"/> 493 Environmental Matters <input type="checkbox"/> 494 Energy Allocation Act <input type="checkbox"/> 495 Freedom of Information Act <input type="checkbox"/> 496 Appeal of Fed. Determination Under Equal Access to Justice <input type="checkbox"/> 498 Constitutionality of State Statutes <input type="checkbox"/> 499 Other Statutory Actions A OK B
A REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Eminent Domain <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	A CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to vacate Sentence <input type="checkbox"/> 520 Habeas Corpus: <input type="checkbox"/> 525 General <input type="checkbox"/> 530 Death Penalty <input type="checkbox"/> 535 Miscellaneous & Other <input type="checkbox"/> 540 Civil Rights <input type="checkbox"/> 550 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS Third Party 76 USC 7702

VI. CAUSE OF ACTION

NOTE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

FLORIDA LAW OF CONTRACTS: DEFENDANT BREACHED HIS DUTY OF ACCOUNTING BY REFUSING TO TURN OVER MONEY RECEIVED ON BEHALF OF PRINCIPALS, PLAINTIFFS

LENGTH OF TRIAL

30 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER FRCP 23 ☐

DEMAND \$

\$3,000,000

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6-28-2000

Paul Ngoji

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPROVED BY

JUDGE

MAG. JUDGE

JUN 28 2000 09:34

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